

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAR 23 2000

PATRICK FISHER
Clerk

BILLY JOE BAILEY,

Petitioner-Appellant,

v.

GLYNN BOOHER, Warden,

Respondent-Appellee.

No. 99-6415

(D.C. No. CIV-99-1461-L)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **BALDOCK, HENRY**, and **LUCERO**, Circuit Judges.**

Petitioner Billy Joe Bailey, proceeding pro se, appeals the district court's denial of his petition for a writ of habeas corpus under 28 U.S.C. § 2254. The district court denied Petitioner's motion to proceed in forma pauperis on appeal, see 28 U.S.C. § 1915(a)(1), and denied his application for a certificate of

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and appellate record, the panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2)(c); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

appealability, see 28 U.S.C. § 2253(c)(2). We deny Petitioner's application for a certificate of appealability and dismiss Petitioner's appeal.

Petitioner pled nolo contendere to several drug-related charges on June 20, 1997 and was sentenced to 25 years imprisonment. On June 11, 1999, Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 claiming ineffective assistance of counsel and improper sentencing enhancement. The magistrate judge issued a thorough report and recommendation denying the petition as untimely because of the one-year statute of limitations in 28 U.S.C. § 2244(d). The district court adopted the magistrate judge's report and recommendation and summarily dismissed the petition. The district court subsequently denied Petitioner's application for a certificate of appealability.

We have thoroughly reviewed the record on appeal, Petitioner's brief, the magistrate judge's report and recommendation, and the district court's order. We deny Petitioner's application for a certificate of appealability for substantially the reasons set forth in the magistrate judge's report and recommendation.

CERTIFICATE OF APPEALABILITY DENIED; APPEAL DISMISSED.

Entered for the Court,

Bobby R. Baldock
Circuit Judge